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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,110	09/29/2003	Joseph A. Marino	MTIZ 2 00002	2431

7590 11/26/2007
FAY, SHARPE, FAGAN,
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Cleveland, OH 44114-2516

EXAMINER

MAI, HUY KIM

ART UNIT	PAPER NUMBER
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2873

MAIL DATE	DELIVERY MODE
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11/26/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/674,110	Applicant(s) MARINO ET AL.	
	Examiner Huy K. Mai	Art Unit 2873	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-16,18-31,33 and 34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-16,18-31,33 and 34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Allowable Subject Matter

1. The indicated allowability of claims 1-4, 6-16, 18-31, 33 and 34 is withdrawn in view of the newly discovered reference(s) to Rodriguez (5,694,199). Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 6-16, 18-31, 33 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Rodriguez(5,694,199).

Regarding claims 23-31, 33 and 34, The recited limitations in claims 23-31, 33 and 34 are shown in Rodriguez's Figs. 1 and 9, column 7, line 37 through column 8, line 64. Rodriguez discloses an apparatus for testing a patient's vision in finding the minimum contrast that the patient can perceive, the apparatus comprises a display device 7, a CPU and a controller 13. Rodriguez, column 8, lines 44-53, discloses "when the patient is not able to see the bands inside one of circle, then the contrast of the previous circles is the "threshold" (i.e., the minimum contrast the patient can perceive) for spatial frequency currently tested." (i.e., this is the patient's first vision test) and further discloses "At this point, the visual performance tester can automatically show a new circle having an increased contrast to refined the patient's threshold determination once the patient responds either with the incorrect answer, or no answer at all

within the time limit.” The new circle having an increased contrast to refine the patient’s threshold determination is nothing more than “a corresponding protocol” for the vision test.

Regarding claims 15, 16 and 18-22, it should be noted that although claims 15, 16 and 18-22 method claims”, the method steps consist of the broad steps of “displaying”, “running”, “receiving” and “changing” etc and therefore these steps would be inherently satisfied by the apparatus of the reference.


Regarding claims 1-4 and 6-14, Rodriguez discloses an apparatus for testing a patient’s vision in finding the minimum contrast that the patient can perceive, the apparatus comprises a display device 7 for displaying a vision test, a CPU associated with the display device 7 and a controller (the keyboard 13 and/or the touch screen 11) for the patient responds to the display on the display device. it should be noted that although claims 1-4,6-14 method claims”, the method steps consist of the broad steps of “displaying”, “having”, and “storing” etc and therefore these steps would be inherently satisfied by the apparatus of the reference.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huy Mai whose telephone number is (571) 272-2334. The examiner can normally be reached on M-F (8:00 a.m.-4:30 p.m.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Ricky L. Mack can be reached on (571) 272-2333. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1562.


Huy Mai
Primary Examiner

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Art Unit: 2873

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Huy Mai
Primary Examiner
Art Unit 2873

HKM/
November 21, 2007